GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour Dispute:—Industrial Dispute between the workmen and the management of Karnataka State Road Transport Corporation (B.T.S. Division), Bangalore-27.

Award of the Presiding Officer, Labour Court, Bangalore-52 published.

Read the following papers:

(1) Letter No. 2224/74-75, dated 20th March 1975 from Shri P. Srinivasacharya, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 20th day of March, 1975

Present:

Shri P. Srinivasacharya, B.A., LL.B.
Presiding Officer.

Reference No. 38 *of* 1974

First Party.—

P. Balakrishnan, S/o Perumal, No. 14, K. V. Lane, Akkipet, Bangalore-2A.

Vs.

Second Party.—

The Management of Karnataka State Road Transport Corporation (B.T.S. Division), Bangalore-27.

Reference.—Government Order No. SWL 1229 LLD 73, dated 27th February, 1974.

AWARD

1. The Government of Karnataka in their order No. SWL 1229 LLD 73, dated 27th February, 1974, have referred an industrial dispute existing between the above named parties to this Court for adjudication on the points of dispute noted below :—

"Are the management of Karnataka State Road Transport Corporation (B.T.S. Division) justified in dismissing Sri P. Balakrishnan, an ex-employee, with effect from 11th February 1972 ?

If not, to what reliefs the workman is entitled ?"

2. The First Party filed his claim statement on 8th April 1974 wherein it is stated as follows :—He was appointed as a Helper in B.T.S. on the 4th September 1966; the first party was discharging his duty without any blemish, fault or remarks to the satisfaction of his immediate superiors and had not committed or was involved in any offence connected with his duties during the course of his employment; The first party was falsely implicated in a criminal case and the Chamarajpet Police had registered a case against the First Party in C.C. No. 703/66 for he was sentenced to rigorous imprisonment on 10th August 1966 by the Court of Second Magistrate Bangalore City. An appeal could not be preferred on the day of sentence nor bail application could be moved by the first party since he could not contact any of his relatives. However he had preferred an appeal after a couple of days after contacting his relatives. The Appellate Court, namely, the Court of District and Sessions Judge, Bangalore, modified the sentence to the period already undergone and released the first party. He was to remain in jail from the date of sentence, *i.e.*, 10th August 1966 till the date of appeal on 16th August 1966. The Upparpet Police charge-sheeted him on 19th June 1967 in C.C. No. 1149/67 in the Court of Second Magistrate. Bangalore City and he was acquitted on 23rd October 1967. In the year 1969

the Security office of the Bangalore Transport Service summoned him and enquired about the criminal cases and directed him to submit his explanation in writing. He had submitted his explanation along with the copies of the judgments, explaining the circumstances under which he was falsely implicated in the said cases by persons enimically disposed towards him. The Deputy General Manager, BTS, issued a show cause notice under sub-clause 15 of clause III of the Amended Standing Order citing the sentence in C.C. No. 703/66 and the judgment of the District Court, Bangalore and the alleged suppression of the information to the Administration. He had submiitted his explanation to the Show Cause Notice on 18th December 1971 explaining the circumstances under which the criminal cases were foisted on him at the behest of the pepole enimically disposed towards him, the circumstances under which he had to remain in prison for a couple of days and there was no suppression of information and as early as 1969 he had submitted his explanation to the Security Officer, B.T.S. But the Deputy General Manager, B.T.S., Bangalore, dismissed the first party from service with effect from 11th February 1972 giving a go-bye to all cannons of natural justice and without any formal enquiry and thereby he was denied reasonable opportunity to establish his innocence and defend himself. Thereafter he preferred an appeal before the General Manager (BTS) on 25th February 1972 which was rejected on 6th January 1974. The dismissal of the first party under the above circumstances is not legal and opposed to all cannons of justice, equity and fairness and also under Clause 19 under Chapter IV of the Amended Standing Orders which says: "uninterrupted good conduct for a period of two years on duty shall cancel all the previous punishment of the employee." Therefore, he prays to declare the order of dismissal dated 11th February 1972 as illegal and inoperative and direct the Second Party to reinstate him with all back wages and continuity of service.

3. This is opposed by the second party in its Rejoinder saying that First Party was appointed as Helper vide DEO No. 52/66, dated 16th April 1966 but he actually reported for duty on 6th April 1966. It is denied that First Party was discharging his duties satisfactorily. As admitted by the first party himself he was convcited in CC No. 703/66. The question of reduction of the sentence imposed by the learned Second Magistrate by the Appellate Court is not of much importance since he was not totally exonerated on the charges levelled against him. Conviction once imposed whether confirmed or reduced to undergo rigorous imprisonment is quite sufficient to take departmental action against the first party in accordance with sub-clause 14 of clause 3 under Chapter IX(B) of the B.T.S. Amended Standing Orders by which the first party was appointed and governed by the competent authority, which amounted to moral turpitude. It is true that the Divisional Security Inspector of B.T.S. Division enquired into the antecedents on the directions issued by the competent authority. The statement of the first party was recorded on 4th May 1970 and he has duly attested the corretness of his statement. The Second Party was not aware that the cirminal cases were falsely implicated by persons enimically disposed towards him and the first party is put to strict proof of the same. The Second Party admitted the show cause notice dated 27th October 1971 issued by the Deputy General Manager. It is further submitted that the first party underwent the imprisonment during the course of his employment suppressing wilfully vital information governing his attendance and availed leave by misrepresenting his official superiors. The second party also admitted the explanation submitted by the first party. Thereafter he was given personal hearing by the Deputy General Manager. Since the competent authority satisfied that the first party was guilty of the act of moral turpitude he was dismissed from service. The contention of the first that uninterrupted good conduct for a period of 2 years on duty shall cancel all the previous punishment of the employee, is applicable

only in respect of an employee who continues to be in service and not in the case of the first party who ceased to be an employee since dismissed. Therefore, the claims of the first party be rejected.

4. The following issues have been framed:

(1) Whether Second Party proves that it was justified in dismissing first party with effect from 11th February 1972 ?

(2) To what relief First Party is entitled ?

5. On behalf of the Second Party one Narayanappa, Case Worker, has been examined as MW-1 and evidence closed. The evidence of MW-1 is to the effect that the first party was wroking as Helper 'A' and he was appointed on 16th September 1966 and was removed from service on 11th February 1972 on the ground that he had committed some misconduct. Preliminary enquiry was held and Exhibit M-1 is the copy of the report. Exhibit M-2 is the copy of the Show Cause noticed dated 26/27th October 1971. Exhibit M-3 is the reply of first party, dated 18th December 1971. Exhibits M-4 dated 2nd December 1971 and M-5, dated 19th January 1972 are copies of memos of personal hearing Exhibit M-6 is the copy of the statement of First Party. Exhibit M-7 is the copy of the termination order. First Party filed an appeal to General Manager and this was rejected as per copy of order Ex. M. 8. He denied the suggestion that no formal enquiry was held by the Second Party in this case. He also denied the suggestion that First Party was not given an opportunity to defend himself.

6. First Party workman got himself examined as W W.1 and has stated that he was appointed as Helper in BTS Division. He has served BTS for 6 years without any blemish and during the course of employment has not committed any offence touching his service. The Chamarajpet Police foisted a case against him for an alleged offence under Section 379 and the Court has awarded three months

rigorous. Ex. W-1 is the true copy of the judgment of the Magistrate Court. He had preferred an appeal to the Sessions Judge. The day on which the court sentenced him three months imprisonment he was not able to meet any of his relations and to take steps regarding appeal. He had preferred an appeal and Ex. W-2 is the copy of the judgment. He has then joined in the service of the Second Party. In 1967 Upparpet Police has filed a case against him for similar offence in the same Second Magistrate Court, Bangalore, wherein he was acquitted. In the year 1969 the Security Officer sent for him and asked about these court cases. He produced judgment copies and his statement was not recorded. He was asked to go. He continued to serve the Second Party. Then he received show cause notice after 6 years. No enquiry was held. He was not given any opportunity to explain the facts and circumstances appearing against him and he was not given any opportunity to defend the case. Without any enquiry he was dismissed. He appealed to the General Manager. That was rejected. Therefore he applied to the Conciliation Officer and the Government has referred this case. He says he is innocent and his dismissal invalid and unjust. He has never committed any theft. He had some personal enemity to the police constable who managed to lodge a false complaint by a stranger and got him involved in the theft case. In fact he had not committed any theft. The second case was also a false on account of the enemity which continued. His total service was 6 years, during which period he was obedient and did work honestly. Ex. W-3 is the judgment of acquittal. In cross-examination he has stated that he did not know the name of the constable in the first case, but know the name of the police constable in the second case; his name was Narayanappa. After his acquittal he has not seen Narayanappa. He denied the suggestion that he had no enemity with the police constable who had foisted the first case. He does not know Kannada and he did not give any instruction to Ex. M. 6. He denied the suggestion that he has given a statement as per Ex. M. 6. Security Officer heard his say in the matter. He could not

see Deputy General Manager. It is incorrect to say that he was given opportunity to explain his case, defend himself and after hearing and going through the document, orders were made by II Party.

7. *Issue* : *No.* 1.—As per the Claim Statement and the Explanation dated 18th December 1971 submitted by the I Party (which is marked as Ex. M-3 by the II Party), I Party was appointed as Helper in the B.T.S. in the month of September 1966. The management witness M.W. 1 has also stated that I Party was appointed on 16th September 1966 as Helper-A. But in the Rejoinder, the II Party has stated that I Party was appointed as Helper "vide DEO No. 52/66 dated 16th April 1966, but he actually reported for duty on 6th April 1966." As admitted by M.W. 1 if I Party's appointed was in the month of September 1966, I Party's conviction on 10th August 1966 cannot be treated as misconduct at all as per the Amended Standing Order Clause III (15), which reads as follows :—

"III. The following Acts or omission shall be treated as misconduct :

xx xx xx

15. Award of punishment by any lawful Court for any criminal offence involving moral turpitude or imprisonment etc.."

The II Party has not produced any Service Record or any documentary evidence to substantiate the fact that I Party was appointed in the month of April 1966 and he had actually reported for duty on 6th April 1966 as per the order dated 16th April 1966 as stated in the counter-statement. In the circumstances, I am not inclined to accept the statement made in the Counter statement of the management that I Party reported for duty on 6th April 1966 and that his orders were issued subsequently on 16th April 1966.

8. Assuming that I Party's appointment was in the month of April 1966, there is no satisfactory explanation for the in-ordinate delay in initiating proceedings in the month of December 1971 by issuing show cause notice in treating this conviction as misconduct and in taking action under Amended Standing Order III. 15. The Security Officer who appears to have been given report dated 17th May 1971 (Ex. M-1) which can be treated as first information report or complaint, has not been examined to find out under what facts and circumstances this conviction came to his light and from which source and what was the immediate cause which prompted him to submit his complaint to the Deputy General Manager. The explanation of the I Party is that some persons who were enemically disposed towards him had filed false complaint in the police in the month of March 1966 and being poor he could not properly arrange for his defence which ended in conviction and he was compelled to remain in jail for 5 or 6 days as he could not contact any of his family members due to financial stringency and before the Sessions Court the learned counsel did not represent the correct picture though he was instructed to argue the I Party was innocent and it was a fit case for acquittal which could be seen from the Order Sheet Ex. W. 2. In support of his explanation that some persons who were enemically disposed towards him had made false allegation, I Party has produced a copy of the judgment of the II City Magistrate, Bangalore, in C.C. No. 1149 of 1967 wherein he has been acquitted for the similar offence. In the circumstances, I Party's request and prayer is the conviction in the year 1966 which was previous to his joining service in the II Party should not have been treated as misconduct and on that ground his services should not have been terminated, specially when his entire service in the II Party was unblemish and very satisfactory.

9. There is no reason to disbelieve the version of the I Party that work was quite satisfactory as no contra-evidence has been led by the II Party by examining

any responsible officer to show that I Party's service was not satisfactory. It is also significant to note that when the explanation of the I Party was called for he readily give it without biding and twisting any facts. The same version he has represented while preferring appeal to the higher authorities and also in his claim statement and evidence before this Court. This reveals the innocence of the I Party.

10. It is beyond contraversy that the date of alleged theft was on 27th March 1966, which is before I Party entered into the service of the II Party either in April or September 1966. This ought not to havt been treated as a misconduct. No offence could be treated as misconduct if it does not find place in the certified Standing Orderh and any contravention of the provisions of the Standing Order is improper and illegal.

11. It was not fair and proper for the management to go into the past history of the employee even before he entered into the service and impose on him punishment of dismissal which is unduly harsh, severe and disproportionate to the alleged misconduct. In this vtew, I am supported by the observations of the Supreme Court in Management of the Federation of Indian Chambers of Commerce and Industry *Vs.* Their Workman, Shri R. K. Mittal (reported in 1971 II LLJ 630), the relevant observations are quoted below:

"..... it is a settled rule that the award of punishment for misconduct is a matter for the management to decide and if there is justification for punishment imposed, the Tribunal should not interfere; but where the puntshment is so disproportionate that no reasonable employer would ever have imposed it in like circumstances the Tribunal may treat the imposition of such punishment as itself showing victimisation or unfair abour practice"

Viewed from any angle, the II Party was not justified in dismissing the I Party workman treating his conviction

for alleged theft on 27th March 1966 as a misconduct under the Standing Orders III. 15, which was obviously prior to his appointment as Helper under the II Party. Accordingly, I answer Issue No. 1 against the II Party and in favour of the I Party.

12. *Issue No.* 2.—It therefore follows that the I Party workman is liable to be reinstated with continuity of service. In the facts and circumstances of the case, I am inclined to feel 25 per cent of the back wages in addition to the relief of reinstatement would meet the ends of justice. Hence my Award.

AWARD

13. In the result, the Management of Karnataka State Road Transport Corporation (B.T.S. Division) are not justified in dismissing Sri P. Balakrishnan, an *ex-employee,* with effect from 11th February 1972. The I Party workman, Sri P. Balakrtshnan, is entitled to the relief of reinstatement with continuity of service and 25 per cent of his back wages. No costs.

P. SRINIVASACHARYA,
Presiding Officer,
Labour Court, Bangalore.

"Copy"

P. Srinivasacharya,
Presidtng Officer,
Labour Court, Bangalore.

ORDER

No. SWL 82 LLA 75, Bangalore, dated 3rd April 1975

S. O 998.—

WHEREAS by State Government Order No. SWL 1129 LLD 73, dated 27th February 1974 the Industrial Dispute between the workmen and the management of Karnataka State Road Transport Corporation (B.T.S. Division), Bangalore-27 was referred to the Labour Court, Bangalore for adjudication.

AND, WHEREAS the Labour Court, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette.*

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,

Under Secretary to Government,
Social Welfare and Labour Department.